

Appl. No. 09/943,744
Amdt. Dated July 14, 2004
Reply to Office Action of April 14, 2004

REMARKS

This submittal is in response to an office action of mail date 4/14/2004.

The Office has withdrawn previous rejections.

The Office has acknowledged the claim for domestic priority.

The Office objected to claims 202 and 203 for improper dependency. Applicant has herein amended 202; and canceled claims 203 and 204.

35USC112

The Office rejected claims 138-141, 143, 145-198, and 202-204 under 35USC112, 1st para., as failing to comply with the written description requirement by use of the term "other than corespun yarn". Applicant strenuously objects. 35USC112, 1st para. requirement is clearly met, and the invention firmly in hand. One skilled in the art would readily understand and appreciate that the specification comports with the claimed subject matter in that it is inherently exclusive of and incompatible with corespun technology. This alone is a sufficient basis for using the limitation in a claim to overcome cited art.

It is illuminating to review the prosecution history. Through three office actions in the first case, and an office visit, and into the present RCE application, the Office has insisted in including "corespun" technology as being somehow included or related to a specification and drawings that on its face and by all interpretations of one skilled in the art, does not pertain to or admit to interpretation as being applicable to "corespun" technology, articles or products made therefrom. At an interview at the Office on April 9, 2003, the Inventor/Applicant, an expert technologist and innovator of many years industry experience and holder of many patents, demonstrated corespun yarn and explained eloquently how and why the specification was inherently distinguished from, exclusive of, and irrelevant to corespun technology. Applicant and Office further discussed and Applicant offered to amend the claims with the terminology "fibers being substantially normal to a cross section of said fiber bundle", which was concurred with by the Office in its interview summary as excluding the corespun prior art rejections. The Office none-the-less required an RCE for further searching, and then cited corespun art yet again!

Appl. No. 09/943,744
Amdt. Dated July 14, 2004
Reply to Office Action of April 14, 2004

It was in response to this repetitive rejection that Applicant amended select claims to include both the term of art "intimate blend" expressly supported in the specification, as well as the exclusionary term "other than corespun yarn" which is inherently evident in the specification to one skilled in the art. Applicant asserts in the first instance that both terms are redundant to the originally agreed limiting terminology, the prior adoption of which made the subsequent repetitive corespun rejections improper, and in the second instance that the two terms are equally limiting with respect to corespun art. See, for example, "**Intimate blend**: A technique of mixing two or more dissimilar fibers in a very uniform mixture. Usually the stock is mixed before or at the picker.", Dictionary of Fiber and Textile Technology, 7th Ed. Copyright 1999 Kosa. An intimate blend clearly indicates a staple yarn made up of staple fibers, and is on its face exclusive of a continuous filament corespun yarn. No one skilled in the art could or would interpret a claim thus limited, to read on or be obviated by corespun art in the manner proposed by the Office in this prosecution.

By reason of this triple redundancy of limitation with respect to corespun art, and without prejudice otherwise, Applicant amends claims 138, 169 and 170 to remove the term, "other than corespun," and relies on the still redundant limitations of "fibers being substantially normal to a cross section of said fiber bundle" and "intimate blend" to maintain its clearance of any previously cited corespun art, while curing this rejection for the affected claims.

35USC102

The Office rejected claims 170-184, 187, 188, and 195-198 under 35USC102(b) as being anticipated by Bak. Applicant invokes its remarks above and in prior submittals and remarks further as follows.

A rejection based on anticipation requires that a single reference teach every element of the claim (MPEP § 2131). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Or stated in another way, a "claim is anticipated only if each and every element as set forth in the

Appl. No. 09/943,744
Amdt. Dated July 14, 2004
Reply to Office Action of April 14, 2004

claim is found, . . . described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). . . .

One skilled in the art would appreciate that Bak is a different technology than the claimed *intimate blend* of the instant invention. It is improper to play fast and loose with terms of art. Bak's reference to an "intimate mixture" is not equivalent to the claim limitation of the term of art, "intimate blend." Further, the "interlacing" term of art in Bak is a characteristic only of continuous filament yarns, and not of staple yarns. Bak is inherently and exclusively concerned with *continuous high strength filaments* and *thermoplastic filaments*, and not with the staple yarns and intimate blend with its random distribution of mixed fibers to which the invention is limited. The Bak disclosure alludes to addressing color issues by adding "fillers, stabilizers and/or pigments" to its filament recipes, which is a far cry from the objectives and dyeable characteristics of the intimate blend of staple yarns taught and claimed by this Applicant. Simply put, Bak's thermoplastic materials and interlaced continuous filaments cannot be said to show the invention "in as complete detail as is contained in the . . . claim." For this reason, Applicant respectfully urges reconsideration and withdrawal of this rejection with respect to the cited claims.

The Office rejected claims 138-141, 143, 147-180, 182, 187-198, and 202-204 under 35USC103(a) as being unpatentable over Sandor, in view of Howland. Applicant invokes its remarks above and in prior submittals and remarks further as follows.

According to the MPEP §2143.01, "[o]bviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found in either the references themselves or in the knowledge generally available to one of ordinary skill in the art."

One skilled in the art would appreciate that Sandor is likewise a composite yarn, other than a staple yarn, using filament fibers rather than staple fibers. It is improper and grossly in error to

Appl. No. 09/943,744

Amdt. Dated July 14, 2004

Reply to Office Action of April 14, 2004

equate the air jet intermingling of Sandors filaments to the term of art "intimate blend" with its intimate contact of staple fibers and plied yarns as described in the specification. With respect to the Howland '623, it is the Applicant's own technology, the disclosure being directed to tightly woven, penetration resistant fabrics. Nowhere in the airjet intermingled and interlaced filaments of Sandor is the *intimate blend* limitation of the Applicant's base claims apparent, implied, or suggested. The Office suggests that Sandor, already explained here to be very distinctive from the instant invention, might be combined with Howland, but Applicant cannot find a rational basis, absent extraordinary inventive effort, for this assumption. There is no teaching, suggestion or motivation apparent in either disclosure for the combination evident to the Applicant. Applicant respectfully urges reconsideration of the propriety of this combination in support of a 103 rejection in the context of the invention as claimed, and withdrawal of the rejection with respect to the affected claims.

The Office rejected claims 143, 145, and 146 under 35USC103(a) as being unpatentable over Sandor in view of Howland as applied to claim 138 and further in view of Zhu. Applicant invokes its remarks above and in prior submittals. Here the Office employs yet another unrelated prior art document disclosing of metal core filaments to dispute an element in Applicant's claims, where there is no stated basis to support the use of the combination as obviating the invention as a whole. As was stated of Zhu by the Applicant in its previous submittal:

"Zhu's Fig. 2 is mischaracterized by the Office on page 3, 2nd sentence, as analogous to the claimed invention. Zhu discloses a core and sheath yarn, Fig. 3, as part of a yarn bundle, Fig. 2. The sheath of the yarn of Fig. 3 is described at col. 2, line 34, as having a sheath of "continuous filaments a plurality of which are applied...around metal fiber core at an angle nearly perpendicular with the axis of the core to cover the core."

First, the corespun geometry with its continuous filaments is the antithesis of the claimed invention. Second, the mischaracterization of Zhu's Fig. 2 is readily apparent upon reading the specification, and flaws the logic of the rejection. Third not withstanding the tendency to interpret the drawing in accordance with the claim with the benefit of hindsight, the text clearly describes the fibers of the sheath as perpendicular with the axis, in stark contradiction to the claim limitation of "normal to the cross section". Forth, the stated objective of the sheath is to cover the core, in stark contradiction to the clear meaning of the "intimate blend" limitation of the Applicant's base claims. Fifth, the size of the Zhu yarns makes it virtually impossible to conform to the configurations described

Appl. No. 09/943,744
Amdt. Dated July 14, 2004
Reply to Office Action of April 14, 2004

and claimed by this Application. For all of these reasons, Zhu cannot alone or in combination support a 35USC103(a) rejection of the claims. Applicant urges that Zhu be withdrawn as a reference and the rejection be likewise withdrawn as not supported with respect to all claims."

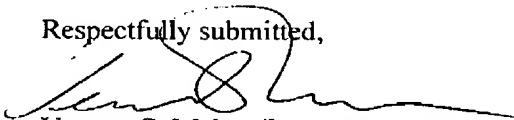
There is no stated basis or rational reason for combining Zhu with Sandor and/or Howland. For these reasons, Applicant urges withdrawal of the combination and the rejection of the affected claims. Applicant further implores the Office to withdraw Bak, Sandor, and Zhu as not meeting the basic criteria for 103 rejections and combinations in the context of the invention as claimed, and to cease using repetitive rejections without a stated rational basis to which the Applicant can respond.

The Office provisionally rejected various claims as to other Howland patents for nonstatutory double patenting. Applicant without comment and without prejudice has herein tendered suitable terminal disclaimers, thus curing all double patenting issues.

The Office made the prior art of O'Conner and Davis of record, which Applicant acknowledges without comment and without prejudice.

Applicant believes the above amendments and remarks to be fully responsive to the Office Action, thereby placing this application in condition for allowance. No new matter is added. Applicant requests speedy reconsideration, and further requests that Examiner contact its attorney by telephone, facsimile, or email for quickest resolution, if there are any remaining issues.

Respectfully submitted,



Vernon C. Maine, Reg. No. 37,389
Scott J. Asmus, Reg. No. 42,269
Neil F. Maloney, Reg. No. 42,833
Andrew P. Cernota, Reg. No. 52,711
Attorneys/Agents for Applicant

Cus. No. 24222
Maine & Asmus
PO Box 3445
Nashua, NH 03061-3445
Tel. No. (603) 886-6100, Fax. No. (603) 886-4796
patents@maineandasmus.com